From: Ron Justi <rjusti@thebank.com> on 01/28/2004 05:00:36 PM
Subject: Equal Credit Opportunity

Issues with the proposals:

1. **Requirements are unclear and will invite expensive lawsuits.** Terms such as “everday words” “legal terminology,” “explanations that are imprecise” and even “wide margins” are unclear, especially with regard to complicated disclosures typical of Regulation Z. Also, it is not clear how institutions should apply the examples to different types of disclosures, such as ATM receipts. While the proposal says that the examples are “optional,” courts cannot be expected to agree. Plus, even if the bank wins a lawsuit, it still pays the cost of defending itself. The subjectivity of the proposal will invite lawsuits as well as second-guessing by examiners.

2. **The proposals will impose an expensive regulatory burden.** Under the proposal, banks will have to review every disclosure required under Regulations B (ECOA), E (EFTA), M (Consumer Leasing), Z (TILA), and DD (TISA) and determine whether bullet points should be added, margins widened, line spacing adjusted. They will have to also be examined for “understandability,” that is whether they are too legal sounding and lack “everyday words,” a very subjective standard. Banks will then bear the cost of redrafting and reproducing many if not all of disclosures. It is probable that some adjustment will have to be made to each required disclosure. The requirements related to font size, margin size, headings, and bullets will drastically increase the length of the disclosures, adding new costs.

3 **The revised disclosures may be less helpful to consumers.** Because the requirements will lengthen the disclosures, in some cases, by pages, consumers will be less inclined to review them. In addition, many banks include additional information that is useful to consumers, especially on the back of checking account and credit card account statements. Institutions will have to omit this useful information or pay for the additional paper. Some related required disclosures may end up segregated.

4. **The regulations affected by the proposal are different from Regulation P and are not suited to this approach.** Regulation P requires generic disclosures that are not specific to any particular transaction or disclosure. A single disclosure, once completed, typically applies to all of the institution’s account, so compliance is much simpler. Applying the same standard to the plethora of various disclosures in the other regulations presents a very different project. In addition, unlike the other consumer protection regulations, there is no civil liability for violations of Regulation P, meaning Regulation P doesn’t invite lawsuits for good faith compliance.

5. **The Board has not identified a problem with existing regulations and disclosures to justify the compliance burden and potential liability.** The Board explains its purpose is twofold: facilitate compliance and ensure consumes understand the disclosures. While generally, banks appreciate consistency among regulations to make compliance easier, it is not justified or workable in this case. Addressing the second purpose, the Board has not made a case. It has not offered any examples or explanations of where the disclosures are confusing or unclear. If they exist, the Board should identify them and address them specifically.